



January 22, 2008

HOUSE BILL No. 1269

DIGEST OF HB 1269 (Updated January 17, 2008 1:11 pm - DI 96)

Citations Affected: IC 6-8.1; IC 22-1; IC 22-2; IC 22-3; IC 22-4; IC 34-11.

Synopsis: Employee classification. Provides that an individual performing services for a contractor is considered to be an employee of the contractor, with certain exceptions. Provides for investigations of the employment relationship between an individual and a contractor by the department of labor, procedures to be followed for investigations, and for various civil penalties to be assessed by the department of labor for: (1) the failure to properly classify the individual; and (2) retaliation against certain persons. Provides that a contractor or an agent of the contractor that intentionally fails to properly classify an individual as an employee commits a Class C misdemeanor, and that the second or subsequent intentional violation within five years is a Class D felony.

Effective: July 1, 2008.

Niezgodski, Stilwell

January 14, 2008, read first time and referred to Committee on Labor and Employment.
January 22, 2008, amended, reported — Do Pass.

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HB 1269—LS 7005/DI 96+



January 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1269

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-3-21 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 21. (a) This section applies after December 31, 2008.**

4 **(b) The department shall cooperate with the:**

5 **(1) department of labor created by IC 22-1-1-1;**

6 **(2) worker's compensation board of Indiana created by**
7 **IC 22-3-1-1(a); and**

8 **(3) department of workforce development established by**
9 **IC 22-4.1-2-1;**

10 **by sharing information concerning any suspected misclassification**
11 **by a contractor (as defined in IC 22-2-14-5) of an employee as an**
12 **independent contractor.**

13 SECTION 2. IC 6-8.1-9-14, AS AMENDED BY P.L.103-2007,
14 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2008]: **Sec. 14. (a) Except as provided in subsection (n), the**
16 **department shall establish, administer, and make available a**
17 **centralized debt collection program for use by state agencies to collect**

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1 delinquent accounts, charges, fees, loans, taxes, **civil penalties under**
2 **IC 22-2-14-13**, or other indebtedness owed to or being collected by
3 state agencies. The department's collection facilities shall be available
4 for use by other state agencies only when resources are available to the
5 department.

6 (b) The commissioner shall prescribe the appropriate form and
7 manner in which collection information is to be submitted to the
8 department.

9 (c) The debt must be delinquent and not subject to litigation, claim,
10 appeal, or review under the appropriate remedies of a state agency.

11 (d) The department has the authority to collect for the state or
12 claimant agency (as defined in IC 6-8.1-9.5-1) delinquent accounts,
13 charges, fees, loans, taxes, or other indebtedness due the state or
14 claimant agency that has a formal agreement with the department for
15 central debt collection.

16 (e) The formal agreement must provide that the information
17 provided to the department be sufficient to establish the obligation in
18 court and to render the agreement as a legal judgment on behalf of the
19 state. After transferring a file for collection to the department for
20 collection, the claimant agency shall terminate all collection procedures
21 and be available to provide assistance to the department. Upon receipt
22 of a file for collection, the department shall comply with all applicable
23 state and federal laws governing collection of the debt.

24 (f) The department may use a claimant agency's statutory authority
25 to collect the claimant agency's delinquent accounts, charges, fees,
26 loans, taxes, or other indebtedness owed to the claimant agency.

27 (g) The department's right to credit against taxes due may not be
28 impaired by any right granted the department or other state agency
29 under this section.

30 (h) The department of state revenue may charge the claimant agency
31 a fee not to exceed fifteen percent (15%) of any funds the department
32 collects for a claimant agency. Notwithstanding any law concerning
33 delinquent accounts, charges, fees, loans, taxes, or other indebtedness,
34 the fifteen percent (15%) fee shall be added to the amount due to the
35 state or claimant agency when the collection is made.

36 (i) Fees collected under subsection (h) shall be retained by the
37 department after the debt is collected for the claimant agency and are
38 appropriated to the department for use by the department in
39 administering this section.

40 (j) The department shall transfer any funds collected from a debtor
41 to the claimant agency within thirty (30) days after the end of the
42 month in which the funds were collected.

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(k) When a claimant agency requests collection by the department, the claimant agency shall provide the department with:

- (1) the full name;
- (2) the Social Security number or federal identification number, or both;
- (3) the last known mailing address; and
- (4) additional information that the department may request; concerning the debtor.

(l) The department shall establish a minimum amount that the department will attempt to collect for the claimant agency.

(m) The commissioner shall report, not later than March 1 for the previous calendar year, to the governor, the budget director, and the legislative council concerning the implementation of the centralized debt collection program, the number of debts, the dollar amounts of debts collected, and an estimate of the future costs and benefits that may be associated with the collection program. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(n) The department may not assess a fee to a state agency or a custodial parent for seeking a setoff to a state or federal income tax refund for past due child support.

SECTION 3. IC 22-1-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 22. The department of labor shall cooperate with the:**

- (1) department of workforce development established by IC 22-4.1-2-1;**
- (2) department of state revenue established by IC 6-8.1-2-1; and**
- (3) worker's compensation board of Indiana created by IC 22-3-1-1(a);**

by sharing information concerning any suspected misclassification by a contractor (as defined in IC 22-2-14-5) of an employee as an independent contractor.

SECTION 4. IC 22-2-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 14. Employee Classification Act

Sec. 1. This chapter applies after December 31, 2008.

Sec. 2. This chapter is intended to address the practice of misclassifying employees as independent contractors.

Sec. 3. As used in this chapter, "agent of the contractor" means:

- (1) an individual having management authority or**

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enforcement powers with respect to a practice or policy of the contractor regarding the classification of an employee;
 (2) a corporate officer; or
 (3) a member of the board of directors;
 of the contractor.

Sec. 4. As used in this chapter, "construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, bridge, alley, bridge, sewer, drain, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation, or other project, development, real property or improvement, or doing any part of these actions. It is immaterial whether or not the performance of the work described involves the addition of any material or article of merchandise to, or fabrication into, a structure, project, development, real property or improvement described in this section. The term includes moving construction related materials to or from the job site.

Sec. 5. As used in this chapter, "contractor" means any sole proprietor, partnership, firm, corporation, limited liability company, association, or other legal entity that engages in construction authorized by law to do business within Indiana. The term includes a general contractor, a subcontractor, and a lower tiered contractor. The term does not include the state, the federal government, or a political subdivision.

Sec. 6. As used in this chapter, "department" means the department of labor created by IC 22-1-1-1. The term includes the commissioner, employees of the department, and agents authorized by the commissioner to act on behalf of the department.

Sec. 7. As used in this chapter, "interested party" means a person with an interest in compliance with this chapter. The term does not require that a person be aggrieved in order to be considered an interested party.

Sec. 8. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 9. As used in this chapter, "performing services" means performing construction services.

Sec. 10. As used in this chapter, "public work" includes any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant,

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1 water works, parking facility, railroad, excavation, or other
 2 project, development, real property, or improvement that is paid
 3 for in whole or in part out of public funds or a special assessment.
 4 The term also includes any public work leased by a political
 5 subdivision under a lease containing an option to purchase.

6 Sec. 11. (a) An individual performing services for a contractor
 7 is considered to be an employee of the contractor unless:

8 (1) the:

9 (A) individual has been and will continue to be free from
 10 control or direction over the performance of the service for
 11 the contractor, both under the individual's contract of
 12 service and in fact;

13 (B) service performed by the individual is outside the usual
 14 course of services performed by the contractor; and

15 (C) individual is engaged in an independently established
 16 trade, occupation, profession, or business;

17 (2) the individual is determined to be a legitimate sole
 18 proprietor or partnership because:

19 (A) the sole proprietor or partnership is performing the
 20 service free from the direction or control over the means
 21 and manner of providing the service, subject only to the
 22 right of the contractor, for whom the service is provided,
 23 to specify the desired result;

24 (B) the sole proprietor or partnership is not subject to
 25 cancellation or destruction upon severance of the
 26 relationship with the contractor;

27 (C) the sole proprietor or partnership has a substantial
 28 investment of capital in the sole proprietorship or
 29 partnership beyond ordinary tools and equipment and a
 30 personal vehicle;

31 (D) the sole proprietor or partnership owns the capital
 32 goods, gains the profits, and bears the losses of the sole
 33 proprietorship or partnership;

34 (E) the sole proprietor or partnership makes its services
 35 available to the general public or the business community
 36 on a continuing basis;

37 (F) the sole proprietor or partnership includes services
 38 rendered on a federal income tax schedule as an
 39 independent business or profession;

40 (G) the sole proprietor or partnership performs services
 41 for the contractor under the sole proprietor's or
 42 partnership's name;

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(H) the sole proprietor or partnership obtains and pays for the license or permit in the sole proprietor's or partnership's name when the services being provided require a license or permit;

(I) the sole proprietor or partnership furnishes the tools and equipment necessary to provide the service;

(J) if necessary, the sole proprietor or partnership hires its own employees without contractor approval, pays the employees without reimbursement from the contractor, and reports the employees' income to the Internal Revenue Service;

(K) the contractor does not represent the sole proprietor or partnership as an employee of the contractor to its customers; and

(L) the sole proprietor or partnership has the right to choose to perform similar services for others on any basis and at any time; or

(3) the individual is an owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier.

(b) A sole proprietor or partnership that is performing services for a contractor as a subcontractor and does not meet the requirements of subsection (a)(2) is considered an individual for purposes of this chapter.

(c) In determining whether a contractor properly classifies an individual as an employee, the department shall consider whether the contractor does the following on behalf of the individual:

(1) Withholds, reports, and remits payroll taxes.

(2) Pays contributions to the unemployment insurance benefit fund established by IC 22-4-26-1.

(3) Maintains worker's compensation insurance as required by IC 22-3-5.

(4) Pays one and one-half (1 1/2) times the regular hourly rate of wages for hours worked in excess of forty (40) hours in a workweek.

(d) A contractor shall maintain records for a period of not less than five (5) years for an individual performing services for the contractor, regardless of whether the individual is classified as:

(1) an employee;

(2) an independent contractor;

(3) a sole proprietor; or

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(4) a partnership.

(e) Records to be maintained by the contractor must include all documents related to, or tending to establish the nature of, the relationship between the contractor and an individual performing services for the contractor. Records that must be maintained for an individual performing services for the contractor include, but are not limited to:

(1) the:

(A) name;

(B) address;

(C) phone number; and

(D) Social Security number or individual taxpayer identification number;

(2) the type of work performed and the total number of days and hours worked;

(3) the method, frequency, and basis on which wages were paid or payments were made;

(4) all invoices, billing statements, or other payment records, including the dates of payments, and any miscellaneous income paid or deductions made;

(5) copies of all contracts with the individual, agreements with the individual, applications for employment by the individual with the contractor, and policy or employment manuals of the employer for the period that the individual performed services for the contractor; and

(6) any federal and state tax documents or other information the department considers relevant or necessary.

Sec. 12. (a) It is a violation of section 11(a) of this chapter for a contractor or an agent of a contractor to fail to properly classify an individual as an employee unless the relationship between the individual and the contractor is excluded under section 11(a) of this chapter.

(b) A contractor is not liable under this chapter for the failure of a subcontractor or a lower tiered subcontractor to properly classify persons performing services as employees.

Sec. 13. (a) In addition to the criminal penalties set forth in section 14 of this chapter, a contractor or an agent of the contractor that violates this chapter is subject to a civil penalty not to exceed one thousand five hundred dollars (\$1,500) for each violation found by the first audit or investigation performed by the department. After a second or subsequent audit or investigation, a contractor or an agent of the contractor is subject to a civil

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penalty not to exceed two thousand five hundred dollars (\$2,500) for each repeat violation found by the department within a five (5) year period after the first violation. For purposes of this section, each violation of this chapter for each person and for each day the violation continues shall constitute a separate and distinct violation.

(b) The department shall consider the appropriateness of the amount of a penalty to the contractor or agent of the contractor charged upon the determination of the gravity of the violation.

(c) The department may assess up to twice the civil penalty under subsection (a) against a contractor or an agent of a contractor that:

- (1) intentionally violates this chapter; or
- (2) obstructs the department during an inspection of a place of employment during an investigation authorized under section 18(a) of this chapter concerning this chapter.

The amount of the penalty determined may be recovered, if necessary, in a civil action brought by the attorney general on behalf of the department. Any uncollected amount under this subsection or subsection (a) is subject to IC 6-8.1-9-14.

Sec. 14. (a) Except as provided in subsection (b), a contractor or an agent of the contractor that intentionally fails to properly classify an individual as an employee under section 11(a) of this chapter commits a Class C misdemeanor.

(b) A contractor or an agent of the contractor that intentionally fails to properly classify an individual as an employee under section 11(a) of this chapter for a second or subsequent violation within five (5) years after the commission of a prior violation commits a Class D felony.

Sec. 15. (a) The department shall post a summary of the requirements of this chapter on its official Internet web site.

(b) The department also shall maintain the list set forth in section 13(d) of this chapter concerning contractors that are barred from performing public works contracts.

Sec. 16. A contractor for which one (1) or more individuals perform services who are not classified as employees under section 11(a) of this chapter shall post and keep posted a notice, prepared by the department, summarizing the requirements of this chapter. The notice shall be posted in a conspicuous place on a job site where the individual performs services and in each of the offices of the contractor. The department shall furnish copies of summaries without charge to a contractor upon request.

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1 Sec. 17. (a) An interested party may file a complaint with the
2 department against a contractor or an agent of the contractor if
3 the interested party has a reasonable belief that the contractor or
4 the agent of the contractor is in violation of this chapter. The
5 complaint shall be filed on a form to be supplied by the department
6 and in a manner prescribed by the department. The department
7 may not investigate a complaint for a violation alleged to have
8 occurred before January 1, 2009.

9 (b) The department shall conduct an investigation to ascertain
10 the facts relating to the violation alleged in the complaint and
11 determine whether a violation under this chapter has occurred.
12 The investigation may be made by written or oral inquiry, field
13 visit, conference, or any method or combination of methods the
14 department considers suitable. The following apply to the
15 investigation:

16 (1) If a contractor refuses to cooperate, the department may
17 make a finding that there is a violation of this chapter.

18 (2) Complainants must provide the department with a notice
19 of a change of address or telephone number or a prolonged
20 absence from the current address so that the department can
21 fully investigate the complaint. A complainant shall cooperate
22 with the department, provide necessary information, and be
23 available for interviews and conferences upon reasonable
24 notice or request by the department. If a complainant cannot
25 be located or does not respond to reasonable requests by the
26 department, the department may dismiss the individual from
27 the complaint.

28 (3) The department may investigate alleged violations not
29 longer than three (3) years preceding the date the complaint
30 was filed.

31 (4) Before making a final determination of a violation, the
32 department shall notify the contractor of the substance of the
33 department's investigation and afford the contractor an
34 opportunity to present any written information within fifteen
35 (15) calendar days for the department to consider in reaching
36 its final determination.

37 (c) As part of its investigation, the department may convene a
38 factfinding conference in person or by telephone to obtain
39 additional information or evidence, identify the issues in dispute,
40 ascertain the positions of the parties, and explore the possibility of
41 settlement. The factfinding conference must be limited to those
42 issues the department believes to be relevant. The following apply

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1 to the conference:

2 (1) Notice of the conference shall:

3 (A) be given to all parties at least ten (10) calendar days
4 before the conference; and

5 (B) identify the individual requested to attend on behalf of
6 each party.

7 (2) A party may be accompanied to a factfinding conference
8 by:

9 (A) the party's attorney or other representative; and

10 (B) a translator if necessary.

11 (3) A departmental investigator shall conduct the conference
12 and control the proceedings. No tape recording, stenographic
13 report, or other verbatim record of the conference may be
14 made. If an individual fails to cooperate at the conference and
15 becomes so disruptive or abusive that a full and fair
16 conference cannot be conducted, the departmental
17 investigator shall exclude the individual from the conference.

18 (4) A complainant who fails to attend a factfinding conference
19 may be dismissed from the complaint. If a contractor fails to
20 attend a factfinding conference, the department may make a
21 finding that there is a violation of this chapter.

22 Sec. 18. (a) The department:

23 (1) may conduct investigations in connection with the
24 administration and enforcement of this chapter;

25 (2) shall enforce the provisions of this chapter; and

26 (3) may hire investigators and other personnel necessary to
27 carry out the purpose of this chapter.

28 (b) An employee of the department has authority to visit and
29 inspect, at all reasonable times, a worksite subject to the provisions
30 of this chapter and has authority to inspect, at all reasonable times,
31 documents related to the determination of whether an individual
32 is an employee under section 11(a) of this chapter.

33 (c) The commissioner or a representative of the commissioner
34 may:

35 (1) compel, by subpoena, the attendance and testimony of
36 witnesses and the production of books, payrolls, records,
37 papers, and other evidence in an investigation; and

38 (2) administer oaths to witnesses.

39 Sec. 19. (a) Whenever the department believes, after
40 investigation, that a violation of this chapter has occurred, the
41 department may:

42 (1) issue and cause to be served on a person an order to cease

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- and desist from further violation of the chapter;
- (2) take affirmative or other action considered reasonable to eliminate the effect of the violation;
- (3) collect the amount of wages, salary, employment benefits, or other compensation denied or lost to an individual; or
- (4) assess a civil penalty allowed under section 13 of this chapter.

A civil penalty assessed by the department and any other relief requested by the department is recoverable in an action brought by the attorney general.

(b) When it appears to the department that a contractor or an agent of the contractor has violated a valid order of the department issued under this chapter, the department may:

- (1) commence an action through the attorney general; and
- (2) seek an order from the superior or circuit court in the county in which the contractor does business, mandating the contractor or the agent of the contractor to obey the order of the department.

The failure of the contractor or the agent of the contractor to obey the order of the court is contempt of court.

(c) A contractor or an agent of a contractor that receives:

- (1) an order based on a violation;
- (2) a civil penalty assessment;
- (3) a cease and desist order; or
- (4) any combination of subdivisions (1) through (3);

from the department, may, within ten (10) working days after receipt, file a written petition for review with the department. The petition for review must contain a statement of the basis for the contest. The department shall mail a copy of the petition for review to the complainant and to any interested party designated on the complaint. The contractor shall post a copy of the petition for review contemporaneously with the filing of the petition at or near the place where the alleged violation occurred, or if the contractor is no longer performing services at the place where the alleged violation occurred, at the contractor's principal place of business in a conspicuous place where labor notices regularly are posted. The contractor shall post a bond in an amount sufficient to pay wages, salary, employment benefits, or other compensation lost or denied to the individual as determined by the department and civil penalties assessed by the department. The department shall rule on the petition for review within thirty (30) calendar days after receipt. If the contractor or an agent of the contractor does not file

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a petition for review within the ten (10) working day period, the department's determination shall be final.

(d) After the second or subsequent violation determined by the department that occurs within five (5) years of an earlier violation, the department shall notify the contractor or the agent of the contractor of the determination and of the right of the contractor or agent of the contractor to seek a hearing on the determination, which must be requested in writing within ten (10) working days after the date of the notice and in accordance with IC 4-21.5-3-2. The failure to request a hearing within the ten (10) working day period will result in immediate placement and publication of the contractor's name on a list maintained on the Internet web site of the department as required under section 15(b) of this chapter. If the contractor or agent of the contractor requests a timely hearing, the commissioner shall set a hearing on the alleged violation. The hearing must take place not more than forty-five (45) calendar days after the receipt of the request for the hearing by the department. The hearing must be held in accordance with IC 4-21.5. If the department finds against the contractor or the agent of the contractor, the name of the contractor or the agent of the contractor shall be added to the list. A contract for a public work may not be awarded by the state or a political subdivision to:

- (1) a contractor whose name appears on the list; or
- (2) a firm, a corporation, a partnership, or an association in which the contractor has an interest;

until four (4) years have elapsed after the posting of the name on the list.

Sec. 20. (a) The employee classification fund is established to:

- (1) administer this chapter;
- (2) investigate contractors and agents of contractors; and
- (3) fund other expenses incurred in carrying out the duties of the department under this chapter.

The fund consists of civil penalties collected by the department under this chapter. The fund shall be administered by the department.

(b) The expenses of administering the fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. The interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not

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1 revert to the state general fund.

2 **Sec. 21. (a) It is a violation of this chapter for a contractor or an**
 3 **agent of a contractor to retaliate through discharge or in any other**
 4 **manner against a person for exercising a right granted under this**
 5 **chapter. Retaliation subjects a contractor or an agent of a**
 6 **contractor to civil penalties under section 13 of this chapter or a**
 7 **private cause of action, or both.**

8 **(b) It is a violation of this chapter for a contractor or an agent**
 9 **of a contractor to retaliate against a person for:**

10 **(1) making a complaint to a contractor or an agent of a**
 11 **contractor, to a coworker, to a community organization, to a**
 12 **state or federal agency, or within a public hearing that rights**
 13 **guaranteed under this chapter have been violated;**

14 **(2) causing a proceeding under or related to this chapter to be**
 15 **instituted; or**

16 **(3) testifying or preparing to testify in an investigation or**
 17 **proceeding under this chapter.**

18 **Sec. 22. (a) An interested party or a person aggrieved by a**
 19 **contractor or an agent of a contractor for a violation of this**
 20 **chapter may file suit in circuit court in the county where the**
 21 **alleged offense occurred or where any person who is a party to the**
 22 **action resides, without regard to exhaustion of any alternative**
 23 **administrative remedies provided in this chapter. An action may**
 24 **be brought by one (1) or more persons on behalf of the person and**
 25 **other persons similarly situated. A person whose rights have been**
 26 **violated under this chapter by a contractor or an agent of a**
 27 **contractor is entitled to collect:**

28 **(1) the amount of any wages, salary, employment benefits, or**
 29 **other compensation denied or lost to the person because of the**
 30 **violation;**

31 **(2) any other compensatory damages and an amount up to**
 32 **five hundred dollars (\$500) for each violation of this chapter;**

33 **(3) in the case of an intentional violation or obstruction of the**
 34 **department during an inspection, punitive damages in an**
 35 **amount equal to the civil penalties assessed under section**
 36 **13(c) of this chapter;**

37 **(4) in the case of unlawful retaliation as set forth in section 21**
 38 **of this chapter, all legal or equitable relief, or both, as**
 39 **appropriate; and**

40 **(5) attorney's fees and costs.**

41 **(b) The right of an interested party or aggrieved person to bring**
 42 **an action under this chapter terminates three (3) years after the**

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1 final date of performing services for the contractor by the affected
 2 employee. The period of limitation is tolled if the contractor or an
 3 agent of the contractor has deterred a person's exercise of rights
 4 under this chapter.

5 Sec. 23. (a) A person may not waive any provision of this
 6 chapter.

7 (b) A contractor or an agent of a contractor that recklessly,
 8 knowingly, or intentionally attempts to induce an individual to
 9 waive any provision of this chapter commits a Class C
 10 misdemeanor.

11 Sec. 24. A finding made under this chapter:

12 (1) is for the purpose of enforcing this chapter; and

13 (2) is not admissible or binding against a party in another
 14 proceeding.

15 Sec. 25. The department, the department of workforce
 16 development established by IC 22-4.1-2-1, the department of state
 17 revenue established by IC 6-8.1-2-1, and the worker's
 18 compensation board of Indiana created by IC 22-3-1-1(a) shall
 19 cooperate under this chapter by sharing information concerning
 20 any suspected misclassification of an employee as an independent
 21 contractor by a contractor or an agent of a contractor. Upon
 22 determining that a contractor or an agent of a contractor has
 23 classified an employee as an independent contractor in violation of
 24 this chapter, the department shall notify the:

25 (1) department of workforce development, which shall check
 26 the contractor's compliance with laws under IC 22-4 and
 27 IC 22-4.1;

28 (2) the department of state revenue, which shall check the
 29 contractor's compliance with laws under IC 6; and

30 (3) the worker's compensation board of Indiana, which shall
 31 check the contractor's compliance with laws under IC 22-3.

32 SECTION 5. IC 22-3-1-5 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2008]: Sec. 5. (a) This section applies after December 31, 2008.

35 (b) The worker's compensation board of Indiana shall cooperate
 36 with the:

37 (1) department of state revenue established by IC 6-8.1-2-1;

38 (2) department of labor created by IC 22-1-1-1; and

39 (3) department of workforce development established by
 40 IC 22-4.1-2-1;

41 by sharing information concerning any suspected misclassification
 42 by a contractor (as defined in IC 22-2-14-5) of an employee as an

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1 **independent contractor.**

2 SECTION 6. IC 22-4-18-8 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2008]: **Sec. 8. (a) This section applies after December 31, 2008.**

5 **(b) The department of workforce development shall cooperate**
6 **with the:**

7 **(1) department of labor created by IC 22-1-1-1;**

8 **(2) department of state revenue established by IC 6-8.1-2-1;**
9 **and**

10 **(3) worker's compensation board of Indiana established by**
11 **IC 22-3-1-1(a);**
12 **by sharing information concerning any suspected misclassification**
13 **by a contractor (as defined in IC 22-2-14-5) of an employee as an**
14 **independent contractor.**

15 SECTION 7. IC 34-11-2-13 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2008]: **Sec. 13. (a) This section applies beginning January 1,**
18 **2009.**

19 **(b) An action brought by an interested party or aggrieved**
20 **person under IC 22-2-14 must be commenced not later than three**
21 **(3) years after the final date of performing services to the**
22 **contractor as provided in IC 22-2-14-22(b).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1269, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 5, line 3, delete "by a" and insert "**in whole or in part out of**".

Page 5, line 3, delete "fund" and insert "**funds**".

Page 5, line 16, delete "or".

Page 6, line 17, delete "." and insert "; **or**

(3) the individual is an owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier."

Page 6, line 20, delete "(a)(4)" and insert "(a)(2)".

Page 6, line 33, after "(d)" insert "**A contractor shall maintain records for a period of not less than five(5) years for an individual performing services for the contractor, regardless of whether the individual is classified as:**

(1) an employee;

(2) an independent contractor;

(3) a sole proprietor; or

(4) a partnership.

(e)".

Page 7, line 1, delete "tax" and insert "individual taxpayer".

Page 7, delete line 2.

Page 7, line 16, delete ", including the" and insert ".".

Page 7, delete line 17.

Page 7, line 28, delete "or a rule adopted under this".

Page 7, line 29, delete "chapter".

Page 8, line 3, delete "chapter or a rule adopted under" and insert "**chapter;**".

Page 8, line 4, delete "this chapter;".

Page 8, delete lines 12 through 36.

Page 9, line 1, after "chapter" insert "**for a second or subsequent violation**".

Page 9, line 2, delete "unrelated offense described in this" and insert "**violation**".

Page 9, line 3, delete "subsection".

Page 9, line 20, after "The" insert "**complaint shall be filed on a form to be supplied by the department and in a manner prescribed by the department. The**".

Page 9, line 27, after "of" delete "method" and insert "**methods**".

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Page 9, line 31, delete "A".

Page 9, delete lines 32 through 34.

Page 10, line 10, after "(15)" insert "**calendar**".

Page 10, line 20, after "(10)" insert "**calendar**".

Page 10, line 35, delete "A party who appears at the conference exclusively through".

Page 10, delete lines 36 through 39.

Page 10, line 40, delete "of the events at issue".

Page 10, run in lines 35 through 40.

Page 10, line 42, delete "A contractor's failure" and insert "**If a contractor fails**".

Page 10, line 42, after "conference" insert ", **the department may make a finding that there is a violation of**".

Page 11, line 1, delete "constitutes evidence that the contractor has violated".

Page 11, line 21, delete "or a rule adopted".

Page 11, line 22, delete "under this chapter".

Page 11, line 24, after "chapter" insert ";".

Page 11, line 24, delete "or the rule;".

Page 12, line 7, delete "fifteen (15) business" and insert "**ten (10) working**".

Page 12, line 10, delete "A" and insert "**The department shall mail a copy of the petition for review to the complainant and to any interested party designated on the complaint. The contractor shall post a**".

Page 12, line 10, delete "shall be posted".

Page 12, line 12, after "place" insert "**where**".

Page 12, line 12, delete "occurred so that the individual whose" and insert "**occurred, or if the contractor is no longer performing services at the place where the alleged violation occurred, at the contractor's principal place of business in a conspicuous place where labor notices regularly are posted.**".

Page 12, delete line 13.

Page 12, line 14, delete "aware of the contested petition".

Page 12, line 17, after "department." insert "**The department shall rule on the petition for review within thirty (30) calendar days after receipt. If the contractor or an agent of the contractor does not file a petition for review within the ten (10) working day period, the department's determination shall be final.**

(d) After the second or subsequent violation determined by the department that occurs within five (5) years of an earlier violation, the department shall notify the contractor or the agent of the

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contractor of the determination and of the right of the contractor or agent of the contractor to seek a hearing on the determination, which must be requested in writing within ten (10) working days after the date of the notice and in accordance with IC 4-21.5-3-2. The failure to request a hearing within the ten (10) working day period will result in immediate placement and publication of the contractor's name on a list maintained on the Internet web site of the department as required under section 15(b) of this chapter. If the contractor or agent of the contractor requests a timely hearing, the commissioner shall set a hearing on the alleged violation. The hearing must take place not more than forty-five (45) calendar days after the receipt of the request for the hearing by the department. The hearing must be held in accordance with IC 4-21.5. If the department finds against the contractor or the agent of the contractor, the name of the contractor or the agent of the contractor shall be added to the list. A contract for a public work may not be awarded by the state or a political subdivision to:

- (1) a contractor whose name appears on the list; or
- (2) a firm, a corporation, a partnership, or an association in which the contractor has an interest;

until four (4) years have elapsed after the posting of the name on the list."

Page 13, line 10, delete "or a rule adopted under this chapter".

Page 13, line 21, after "(2)" insert "**any other**".

Page 13, line 22, delete "chapter or a rule" and insert "**chapter**";

Page 13, delete line 23.

Page 13, line 24, after "(3)" insert "**in the case of an intentional violation or obstruction of the department during an inspection**".

Page 14, line 27, delete "established" and insert "**created**".

Page 14, line 38, delete "established" and insert "**created**".

and when so amended that said bill do pass.

(Reference is to HB 1269 as introduced.)

NIEZGODSKI, Chair

Committee Vote: yeas 7, nays 4.

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